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BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE: COMPLAINT OF US LEC OF)
TENNESSEE, INC. AGAINST ELECTRIC) DOCKET NO. 02-00562
POWER BOARD OF CHATTANOOGA)

PETITION FOR PARTIAL RECONSIDERATION

Pursuant to T.C.A. § 4-5-317(a) (2002 Supplement), US LEC of Tennessee, Inc. ("US LEC") submits the following Petition for Reconsideration, in part, of the Hearing Officer's Order of June 26, 2003, on the Motion for Summary Judgment filed by the Electric Power Board of Chattanooga ("EPB").

Argument

US LEC asks that the Hearing Officer reconsider, or clarify, that portion of the Order holding that summary judgment "is granted on US LEC's claim that the use of the name EPB Telecommunications Division constitutes illegal cross-subsidization." Order, at 17. The Hearing Officer's full explanation of this ruling is as follows (id., at 11):

Insofar as US LEC alleges that mere use of the name EPB, without more, constitutes a subsidy, US LEC has presented no legal or evidentiary support for its claim. The record shows that EPB applied for its CCN under that name and has been using it since 1998. Absent some evidentiary showing of a tangible benefit accruing solely from the use, for identification purposes, of a name reflecting an approved and accurate affiliation, it cannot be said that such use constituted a subsidy in violation of Tenn. Code Ann. § 7-52-402. Accordingly, summary judgment is appropriate on the claim related to the use of the appellation EPB.

At the same time, however, the Hearing Officer also ruled that the joint marketing campaigns of EPB's electric and telecommunications divisions may constitute an illegal subsidy

and/or violate EPB's Code of Conduct. She held that these allegations "require further examination" and, therefore, will be the subject of an evidentiary hearing. Id., at 11.

US LEC respectfully suggests that these two findings could potentially conflict. If, as US LEC has requested, the TRA decides to clarify and strengthen the Code of Conduct "to prevent EPB Telecom from leveraging the good will and reputation of EPB electric" (Response to Motion for Summary Judgment, at 3), the TRA could decide to order EPB Telecom to use a different name for marketing purposes. Indeed, that may well be the only effective means of implementing the "separate identities" requirement of the Code of Conduct which EPB has agreed to follow. The legal name of EPB Telecom is of little or no importance, and US LEC has never disputed the fact that EPB Telecom is, in fact, a division of EPB. What matters, however, is how EPB's telecommunications division markets its services to the public and whether the use of the name "EPB Telecom" in company advertising necessarily gives the impression that EPB Telecom and EPB's electric division are one entity in violation of the Code of Conduct.

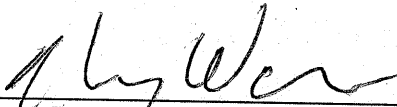
US LEC does not dispute the Hearing Officer's finding that the use of the name EPB Telecom "for identification purposes" is permissible. What is not appropriate, however, is the intentional confusion caused by the use of that name in the company's marketing, especially when used in conjunction with the marketing of EPB's electric services. That is the issue which remains to be litigated and US LEC is concerned that one potential remedy to this problem – ordering EPB Telecom to market its services under another name – may be foreclosed by the Hearing Officer's ruling.

Therefore, US LEC asks that the Hearing Officer either reconsider that portion of the Order or clarify that her ruling regarding the use of the name EPB Telecom for "identification purposes" does not preclude the Authority from directing EPB Telecom to use another name for

marketing purposes in order to prevent an illegal cross-subsidy and to implement the "separate identities" requirement of the Code of Conduct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 11th day of July, 2003.

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